

REMARKS

The Office Action of June 9, 2008 states that this application contains claims directed to the following patentably distinct species: species A, Figs 4,5; species B, Figs 6, 7; species C, Figs. 8,9; species D, Figs 10,11; species E, Figs. 12, 13; species F, Figs. 14, 15 and; species G, Figs. 17-20. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-10 and 18-21 are generic.

Applicant elects, the species A, Figs. 4 and 5, without traverse for further prosecution on the merits. Claims 1 – 10, 16, 18 – 21 are associated with the species A and should be subject of the initial examination.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be

traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.


Applicant elects the species A, Figs. 4 and 5, without traverse.

Applicant believes that the present election will allow the examiner to limit a field search to one particular species.

Reconsideration of all outstanding rejections is respectfully requested.

All claims as presently submitted are deemed to be in form for allowance and an early notice of allowance is earnestly solicited.

Respectfully submitted,
Małgorzata Wesołowska

By: 
Horst M. Kasper, her attorney
13 Forest Drive, Warren, N.J. 07059
Tel.: (908)526-1717; Reg. No. 28559
Attorney's Docket No.: MID202

Rep/am